

**OPINION  
47-129**

April 11, 1947 (OPINION)

FIREWORKS

RE: Kinds Prohibited - Sale Authorized

This will acknowledge your letter of April 7, in which you ask for an interpretation of House Bill 142 of the Thirtieth Legislative Assembly on behalf of your client, Rich Brothers, distributors of fireworks in the city of Fargo, North Dakota, insofar as it may be determined from that law what fireworks may be legally sold in the state of North Dakota.

This statute was passed as an emergency measure and approved by the Governor on March 11, 1947. The specific nature of your inquiry on behalf of your client is whether or not certain deflagration fireworks or those that do not have an audible effect by combustion or sparklers or inflammable compounds may be sold under the terms of House Bill 142.

Section 1 of House Bill 142 defines "fireworks" as follows:

As used in this Act, the term 'fireworks' means any substance or combination of substances or articles prepared for the purpose of producing a visible or an audible effect by explosion, or detonation, and includes blank cartridges, toy cannons, and toy canes in which explosives are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, sky rockets, roman candles, daygo bombs, or other fireworks of like construction, and any fireworks containing any explosive or compound, or any tablets or other device containing any 'fireworks' shall not include toy pistols, toy guns, in which paper caps containing twenty-five hundredths grains or less of explosive compound are used and toy pistol caps which contain less than twenty hundredths grains of explosive mixture, or Chinese-made firecrackers of not more than 1-1/2 inches in length and 1/4 inch in outside diameter."

When under discussion in the House, the foregoing definition in line 5 of the bill contained the words "combustion" and "deflagration." In line 10, the word "sparkler" appeared; in line 11, the word "inflammable" appeared. On February 14th, Representative Fitch, Chairman of the Committee on Industry and Business, to whom House Bill 142 had been referred, recommended that the bill be amended as follows:

In line 5, strike out the words 'combustion' and deflagration.'

In line 11, strike out the word 'inflammable.'

In line 18, strike out the '.' and insert in lieu thereof a ','

add 'or Chinese made firecrackers of not more than 1-1/2 inches

in length and 1/4 inch in outside diameter.'

It was also recommended that other sections of the bill be amended. The committee recommended that in line 212 after the word retail should be added "bring into the state or cause to be brought into the state" in the title of section 5. In the title of section 5, strike out the word "stock" and in lieu thereof insert "fireworks or combustibles."

In view of the definition as contained in House Bill 142 of the term "fireworks," the question has arisen whether the enumeration of the type of fireworks that may be sold under the general definition as contained in section 1 prohibits the sale of every other type of fireworks under the terms of the law, or does the exclusion of the fireworks prohibited merely pertain to those types of fireworks that are explosive in their nature and not listed in the definition as being permissible under the statute?

Ordinarily "the expression of one thing is the exclusion of another." (Expressio unius est exclusio alterius.) The question arises whether that rule of construction should be applied to the definition of the term "fireworks" as used in section 1 of House Bill 142, so as to permit only those items expressly allowed. In order to attempt to ascertain what the legislature meant by the definition of "fireworks", as contained in section 12, resort must be had to the legislative intent as that may be gathered from the law and the amendments thereof, as set forth above. In other words, was it the intent of the legislature when the words "combustion," "deflagration," "sparklers" and "inflammable" were stricken from the bill that such materials might legally be sold in the State of North Dakota?

In a letter recently written to this office, Mr. Fitch, the Chairman of the Committee on Industry and Business, that had before it House Bill 142, indicated that when the committee report came out on the floor, the bill was amended to make it more workable than it might otherwise be, and to bring about the use of "safe and sane" fireworks in the state of North Dakota. He further indicated that the committee was much impressed with the need of controlling fireworks in North Dakota and that because of observation of the operation of a similar law in Minnesota, where considerable bootlegging of fireworks was going on, it seemed to be better legislation to permit the sale of some fireworks of the safe and sane kind, and thus make it possible to enforce the law against those few violators who might insist upon selling and using dangerous and explosive kinds of fireworks.

The elimination from the bill as originally introduced by way of amendment in the House of the words "combustion," "deflagration," "sparklers," or "inflammable" must have had some purpose, and while it is a fundamental principle of statutory construction to ascertain the intent of the legislature and to discover such intent from the language of the Act itself, resort may be had to other aids available to gather that intent.

"As the intention of the legislature, embodied in a statute, is the

law, the fundamental rule of construction, to which all other rules are subordinate, is that the court shall, by all aids available, ascertain and give effect unless it is in conflict with constitutional provisions, or is inconsistent with the organic law of the state, to the intention or purpose of the legislature as expressed in the statute." 59 C.J. 948, paragraph 568.

The intention of the legislature may also be obtained by looking to the subject matter of the Act, the object to be accomplished or the purpose to be subserved.

"In construing a statute to give effect to the intent or purpose of the legislature, the object of the statute must be kept in mind, and such construction placed upon it as will, if possible, effect its purpose and render it valid for that purpose." See 59 C.J. 961. House Bill 142 apparently aimed to prohibit certain explosive fireworks, permit the sale of certain other explosive fireworks deemed relatively harmless, and made no mention of the kind within the meaning of the deleted words by way of amendment.

The Chairman of the Committee that had this bill under consideration has expressed the thought that it was the purpose of the House of Representatives to obtain a law regulating the sale of fireworks which would bring about the sale of safe and sane fireworks in the state of North Dakota, particularly, the "dangerous explosive kind."

It may well be argued that by the amendment, heretofore referred to, of the definition of "fireworks," that the legislature had in mind that fireworks that did not produce any audible effect by combustion, fireworks of the deflagration type, sparklers, and inflammable compounds were not of the dangerous explosive kind, although it could also be argued that all fireworks are, to some extent, dangerous. Yet it seems to be a reasonable conclusion that the legislature by the elimination of the words "combustion," "deflagration," "sparklers," and "inflammable" had in mind to differentiate between that type of fireworks that were not considered as dangerous to the health and safety of the citizens of the state and those of the explosive kind or type. There would be no reasonable basis for the elimination of that type of fireworks from the definitions as finally enacted, if that was not the thought and intent of the legislature. This is borne out by Mr. Fitch's statement as to the intent of the legislature. He also states that the Senate adopted the same version of the bill as the House and that he himself explained the intent of the legislature to Senator Raschko and that on the strength of the representations made by him to Senator Raschko, the Senate Committee recommended the bill for passage in the form in which it was passed by the House.

Since it is a fundamental rule that statutes should be so construed as to give effect to the purpose of the lawmakers and since it appears reasonable that the elimination of the words "combustion," "deflagration," "sparklers," and "inflammable" had a definite purpose, it appears that the intent of the legislature was such as to prohibit under the definition of the bill as enacted only those types of fireworks which were of the explosive kind, and that that portion of the definition which makes permissible the sale of certain fireworks was a limitation upon the general definition as it applied

to explosive fireworks, and that the legislature by the definition of fireworks did not intend to prohibit the sale of such fireworks as those that would not cause any audible effect by combustion, the deflagration kind, sparklers, and inflammable compounds, and that the same are, therefore, not within the terms of House Bill 142.

It would appear reasonable to assume that the legislature felt that if too stringent a prohibition of the sale of fireworks were enacted, it would produce a bootlegging thereof, as appears to have been the experience in Minnesota, and that the real intent and purpose of the amendment of the statute was to enact a statute which would eliminate the sale of that type of fireworks considered more dangerous to the health and safety of our citizens than other types, and not to prohibit the sale of every type of fireworks, except those enumerated and excepted from the general definition, which would include toy pistols, toy guns, and paper caps containing twenty-five hundredths grains or less of explosive compounds, and toy pistol caps which contain less than twenty hundredths grains of explosive mixture and Chinese made firecrackers of not less than 1-1/2 inches in length and 1/4 inch in diameter.

Except as provided in the act, no person shall offer for sale, expose for sale, sell at retail, or bring into the state, or cause to be brought into the state, or use or explode any fireworks. We believe that the exception of the fireworks enumerated in the general definition, as contained in section 1, does not include fireworks that do not create any audible effect by combustion or deflagration materials, sparklers, and inflammables. These, we believe, may be sold under the statute.

It is, therefore, the opinion of this office that any resident wholesaler, dealer, or jobber selling at wholesale, fireworks, is not prohibited from selling fireworks which do not create any audible effect by combustion, the deflagration kind or type, sparklers, and inflammable compounds, and that such fireworks are not within the general prohibition of the word "fireworks" as used in section 1 of the Act.

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